## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DARRELL N. WOLFORD Claimant	}
VS.	) ) ) Docket No. 196,863
OSMAN CONSTRUCTION Respondent	) )
AND	
STATE FARM FIRE & CASUALTY COMPANY Insurance Carrier	}

## ORDER

Respondent appeals from a Preliminary Hearing Order of February 27, 1995, wherein Administrative Law Judge Nelsonna Potts Barnes awarded claimant benefits finding respondent had failed to prove claimant's use of alcohol had contributed to claimant's injury pursuant to K.S.A. 44-501(d)(2).

## ISSUES

Whether claimant's use and consumption of alcohol "contributed to" the claimant's injury on November 16, 1994.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Boards finds as follows:

The Appeals Board finds the respondent has not proven by a preponderance of the credible evidence that claimant's consumption of alcohol contributed to the injuries suffered on November 16, 1994.

Claimant, an employee of the respondent, suffered a broken leg after tripping over a scaffold while carrying a window with his foreman at a construction site on the date alleged. The window, which weighed between one hundred and one hundred and twenty (100-120) pounds, was large and cumbersome. While carrying one end of the window claimant's foot became wedged against some lumber. The foreman, who was carrying the other end of the window, did not realize claimant's predicament and continued to push from the rear causing claimant's leg to snap.

IT IS SO ORDERED

After being transported to the hospital, the treating physician observed the smell of alcohol around claimant and did a blood alcohol test. The blood alcohol level was found to be .132 a finding which was stipulated to by the parties.

Claimant, an admitted alcoholic, advised he had had several beers on the date of injury but was not intoxicated. He testified it required between twelve (12) and twenty-four (24) beers in a single day in order for claimant to feel any effects. Claimant's testimony is unrebutted. No evidence was presented by the respondent that claimant was showing any signs of inebriation and there was no evidence that claimant's injury was contributed to by claimant's consumption of alcohol. Contribution must be proven by the respondent in order for this certain defense to be applied. As no evidence exists in the record that claimant's consumption of alcohol contributed to this injury the Appeals Board finds the Order of Administrative Law Judge Nelsonna Potts Barnes is appropriate and should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes of February 27, 1995, is affirmed.

II IO OO ONDENED.	
Dated this day of Ma	ay, 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Bryce A. Abbott, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director